Dutchess Resource Management, Inc. ***and*** **Daniel T. Butler.** Case 3–CA–19145

January 29, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On April 1, 1996, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended order as modified, and set out in full below.[2]

We agree with the judge that the Respondent violated Section 8(a)(1) of the Act by discharging statutory supervisor Daniel Butler because he would not modify the substance of his version of the incidents relating to Christopher Bittner, the union steward. We find without merit the Respondent's argument that the judge erred in finding this violation because, inter alia, the General Counsel did not establish that the Respondent sought to compel Butler to lie about these incidents. Even assuming that the Respondent thought that other supervisors were telling the truth about the incidents and that the Respondent simply wanted Butler to conform his story to theirs, we find that Bittner had a statutory right to have Butler present the facts at issue as he honestly perceived them.[3] Accordingly, we agree with the judge that the Respondent interfered with that right by discharging Butler in reprisal for his refusal to change his statements.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Dutchess Resource Management, Inc., Poughkeepsie, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging any of its supervisors because they refuse to materially revise their accounts of incidents which are the subject of employee grievances.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Daniel T. Butler full and immediate reinstatement, in the manner prescribed in the Remedy section of the judge's recommended Order, to his position as a shift supervisor and make him whole, with interest, for any loss of pay he suffered as a result of the unlawful discharge.

(b) Within 14 days from the date of this order, remove from its files any reference to his unlawful discharge and, within 3 days thereafter notify Daniel T. Butler in writing that this has been done and that his discharge will not be used against him.

(c) Preserve and, on within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Poughkeepsie, New York facility copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 13, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The Order is modified in accordance with our decision in *Indian Hills Care Center,* 321 NLRB 144 (1996).

[3] There is no contention or evidence that Butler fabricated his version of the facts.

[4] With respect to Butler's statement regarding Bittner's harassment charge, we note that Respondent does not deny the General Counsel's contention that the charge was concerted protected activity.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of our supervisors for refusing to materially revise statements that they have written concerning incidents that give rise to employee grievances or complaints.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL offer Daniel T. Butler immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his other rights or privileges previously enjoyed.

WE WILL make Daniel T. Butler whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

DUTCHESS RESOURCE MANAGEMENT, INC.

Alfred M. Norek, Esq., for the General Counsel.
Louis J. Carr, Jr. Esq., of Pittsburgh, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Dutchess Resource Management, Inc. (the Respondent), in violation of Section 8(a)(1) of the National Labor Relations Act (the Act), discharged one of its supervisors, Daniel T. Butler, because he refused to change the substance of his account of an incident which led to the suspension of an employee and an arbitration thereon. The Respondent's answer avers that Butler was discharged solely for poor performance.

I heard this case in Poughkeepsie, New York, on January 22 and 23, 1996. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a New York corporation. It operates a plant in Poughkeepsie, New York, which burns municipal solid waste to produce electricity. In its operations annually, it meets the Board's nonretail standard for asserting jurisdiction.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. Background

The Respondent, a subsidiary of Westinghouse Corporation headquartered in Pittsburgh, Pennsylvania, took over the operation of the power plant in Poughkeepsie, New York, about 7 years ago from another company.

At that time, the Charging Party, Butler, had been working there as a crane operator and continued to work there in that capacity for the Respondent. He was promoted to an assistant operator's position in 1989, to an operator's position in 1990, and to a a shift supervisor's position in February 1992. Butler held that position until his discharge on January 13, 1995.

A shift supervisor oversees a crew of four employees and is responsible for the entire operation of the plant during his shift.

B. The Incidents in 1994

All dates below are for 1994 unless stated otherwise.

The specific incident that gave rise to the issue in this case took place on March 31. As Butler began his shift that morning, two employees, Christopher Bittner and Stacy McMillan, had a verbal altercation. On April 6, one of those two employees, Bittner, was notified by the Respondent that he was suspended for 5 days, assertedly because of his actions on March 30 and 31 as "Shop Steward" in harassing a coworker to induce him to lie to management about a matter involving shift coverage. Bittner's suspension ultimately was the subject of an arbitration hearing, held in 1995. The labor organization for which Bittner was a shop steward is referred to in the record as Local 130 of the Operating Engineers; it has a collective-bargaining agreement with the Respondent covering the nonsupervisory employees at Poughkeepsie.

Butler and others had witnessed the altercation between Bittner and McMillan on March 31. That same morning he submitted, upon the request of Richard Felch, the Respondent's operations manager then, a written account of it.

Butler testified as follows respecting a discussion he had with Plant Manager John McCarthy at about noontime that same day. McCarthy told him that "we've had it with Bittner," that he, McCarthy, had spoken with Kathy Mitchell, Westinghouse's human resource manager in Pittsburgh; and that Pittsburgh wants a stronger statement from Butler. Butler replied that he "would not change the basic facts of what (he) wrote." Butler did not give McCarthy a second statement thereon until May 10, as discussed further below.

On April 6, the same day on which Bittner was notified of his 5-day suspension, Felch gave the charging party, Butler, a memorandum under the subject, performance improvement plan. It stated, in substance, that Felch has had numerous formal and informal discussions in the preceding 12 months with Butler and that Butler was now being formally notified that his performance has not been satisfactory in three areas—safety in following "lock out tag procedures," failure to complete "Daily Summaries" forms, and failure to follow time card verification procedures. The memorandum further stated that Felch would reevaluate him after 60 days and that if he did not show immediate and sustained acceptable performance, he will be subject to further discipline, up to and including termination.

Butler testified that he had never previously been disciplined, that he had not previously heard of a performance improvement plan and that, prior to April 6, no one had discussed with him any of the three areas cited in the memorandum given him that day. Butler's last regular performance review covered the period February to October 1993, i.e., a period within the 12-month period set out in the plan he was given by Felch on April 6. There is no indication in that review that his work was deficient in any way and no reference whatsoever as to the three areas cited in the improvement plan he was given on April 6.

Felch testified that, because he was not familiar with a performance improvement plan, he consulted with Eileen Drain, the Respondent's human resource representative at Poughkeepsie, and with Westinghouse's human resource manager, Kathy Mitchell, before he gave the plan to Butler on April 6. His testimony is vague as to how the specifics of that plan were drafted; he related that that it "was brought to [him] by Miss Drain who showed [him] exactly [what] we were doing on it, which was something that we hadn't used before," and that he had previously discussed with Drain areas in which Butler "needed to come up to the standards, such as safety procedures, safety administration, time cards [and] the accuracy of reports."

Drain testified that, 2 weeks prior to April 6, she had drafted the performance improvement plan which Felch gave to Butler, but that it was not given him until April 6 because she wanted to review her draft with Mitchell.

Mitchell did not testify. No documents were offered in evidence respecting any correspondence Drain had with Mitchell whose office is in Pittsburgh or respecting any records, respecting Butler's job performance specifically, that she may have reviewed in drafting the detailed plan for Felch which he gave to Butler on April 6. One of the asserted deficiencies in Butler's performance, as stated in the plan, referred to a failure on his part to verify and countersign timecards, an omission which purportedly resulted in "two of (Butler's) employees (having) been paid incorrectly." Butler testified that it was another supervisor, and not him, who had failed to follow the correct procedure respecting the timecards of those two employees. The log maintained by the supervisors contains the names of employees who work with them on their respective shifts. Drain's account did not address that aspect of Butler's testimony. She related only that she herself had experienced timecard problems with Butler.

In evaluating credibility as to whether Butler had received counseling from Felch prior to April 6 respecting his work performance or as to Drain's testimony to the effect that the performance improvement plan was prepared prior to the Bittner-McMillan incident, the following testimony as to the discussion Butler had with Felch when he was given the performance improvement plan is also relevant.

Butler testified as follows respecting that discussion. He asked Felch if other supervisors were getting similiar memorandums. Felch said that he was the only one. Felch then asked him what really went on between the two employees, Bittner and McMillan, on March 31. When Butler told him that his observations that day were contained in the statement he had submitted, Felch remarked that Bittner was a strong arm type who was teaching people how to think and that Kathy Mitchell got very upset over the influence that Bittner had with employees respecting their votes on the matter of implementing a 12-hour shift. When Butler asked why he was the only supervisor who was given a memorandum, Felch replied that all the jobs in Poughkeepsie were in jeopardy because the division is losing money and that Pittsburgh was looking to sell the plant. Felch told him that Pittsburgh is under the impression that the employees are running the plant, that it perceives Butler as too liberal and that "they're looking for [Butler] to f— up."

Felch, when asked by the Respondent's counsel if he had at any time told Butler that people were watching and waiting for him to f— up, responded that he did not recall that statement.

I credit Butler's vivid account of his discussion with Felch on April 6. I find unpersuasive the substance of Felch's account that he had given Butler substantial counseling as to work deficiencies in the 12 months preceding April 6; Butler's last performance appraisal in that very period makes no references to any deficiencies in his work. I find unpersuasive also Drain's account as to how and when the performance improvement plan given Butler was prepared.

The General Counsel presented testimony as to another incident involving Bittner in which Butler was asked by the Respondent to submit a revised account.

On April 28, shop steward Bittner argued with Lead Supervisor Ronald Zinski apparently about which shift was on duty when a problem arose. According to Butler, Zinski told Bittner, in that argument, that he would not be working there much longer and that Bittner then filed "harassment charges" against Zinski with the Respondent's chief financial officer, Prinkey. Butler, about that same day, was requested to submit and did submitt a written account as to that incident to operations manager Felch.

On May 9, the Respondent's plant manager, John McCarthy, met with Butler and with Zinski. He asked them to tell him about the discussion Zinski had with Bittner on April 28. According to Butler, Zinski "violently disagreed" with Butler's account of that incident. McCarthy told them to write "new statements." Butler, who had earlier prepared a second written account of the Bittner-McMillan altercation that occurred on March 31, also prepared a second written account of the Bittner-Zinski argument on April 28. He gave both to McCarthy on May 10. Butler's second statements, while phrased differently, did not change the substance of the originals.

Butler testified credibly as follows as to another conversation he had with Felch. On June 24, Felch told him that Bittner had filed harassment charges. Felch, holding papers in his hand, asked Butler whom he should believe. Butler replied that he wrote the truth. Felch said that he needed to have Butler's statements agree with these, a reference to the other papers in his hand, which Butler assumed were those given by lead supervisor Ronald Zinski and by an employee, surnamed McDonald. Butler told Felch that he could not do that, that he was not raised that way.

Five days later, Butler was called to Felch's office. Butler's account of that meeting follows. Felch asked him if he liked "being nitpicked." He handed Butler a memorandum, again under the subject, performance improvement plan. It cited various instances of purported deficiencies in his work performance; it informed him that his probation was being extended 30 days; and it notified him that, unless he improved, he could be subject to further discipline, including termination of employment. After they discussed the contents of the notice, Felch asked Butler if he had changed his mind about the statements he had written. Butler told him, in substance, that he would not change his account. Again, I credit Butler's testimony.

Butler testified that he received no further warnings or criticism for the rest of the year. Rather, on July 8, he related that he had a talk with the Respondent's chief financial officer then, Prinkey, in which he, Butler, expressed a desire to return to the job he had held before he became a supervisor. Prinkey commented that he had influence in Pittsburgh and he urged Butler to swallow his pride and make Felch happy.

Prinkey did not testify.

Felch testified that he had told Butler, at the end of his 30 days of extended probation, that his probation was extended indefinitely. There is no written record that Butler's probation was so extended.

Butler's account is more plausible than Felch's. I credit Butler's testimony that he received no warnings after June 24 and find that his period of probation was not extended.

On January 3, 1995, Butler was interviewed by the Respondent's counsel in preparation for a hearing to be held before an arbitrator as to the 5-day suspension Shop Steward Bittner had received. Butler was informed then that the Respondent would likely not call him as a witness. Butler was discharged 10 days later as discussed next.

C. Butler's Discharge

On January 13, 1995, Butler met with Felch and Prinkey. He was given a letter which stated that he was discharged for unsatisfactory performance, citing items discussed below. Butler remarked that the letter "was crap." Prinkey then, alluding to the conversation he had had with Butler on July 8, told Butler that, "unfortunately, [Felch] has not been able to come to [him] and say that you made him happy."

The January 13 letter stated that, despite numerous counseling sessions and a formal performance improvement plan, Butler's unsatisfactory performance has continued. It cited as the most recent incident of Butler's unsatisfactory performance one that had taken place 3 days before. Butler testified that, prior to receiving the January 13 discharge letter, Felch had not talked to him about that recent incident.

Respecting the contents of that letter, Butler also testified that he had had no counseling sessions other than the meetings with Felch discussed above. He testified further that the deficiencies referred to in the performance improvement plans were, in substance, minor items, one of which related to a clerical oversight by another supervisor, as discussed above. Respecting the "recent" matter referred to in the January 13, 1995 dismissal letter, i.e—" failure to valve in water to the feed chute liner," the record testimony thereon follows.

The Respondent's plant burns municipal solid waste, i.e., garbage, as fuel in producing electricity. The garbage is brought to a walled holding area from which it is rammed through an open "resistance door" into the furnace; the resistance door is then closed as the garbage burns. The door itself has pipes inside it through which water flows as a coolant. The surrounding walls of the area, from which the garbage is pushed into the furnace, have a liner. It is referred to as the "feed chute liner." It too has piping inside it through which water flows as a coolant. A main valve supplies water to a pipe which has one branch leading to the pipes inside the resistance door; a second branch directs water to the pipes inside the feed chute liner. There are secondary valves, one of which can cut off the water supply to the resistance door and another which can cut off water to the feed chute liner.

As of January 9, 1995, an outside engineering firm had determined that the resistance door would be replaced and that it would be "sacrificed" by cutting off the water supply to it while the furnace was "on line," i.e., while garbage was being burnt in it. Lead Supervisor Zinski was on the 3 to 11 p.m. shift that day. Because one of the return valves could not be fully closed, Zinski had to shut down the main valves so that water could be drained from the pipes in the resistance door. The boiler was not operating then. Zinski was relieved by Butler at the end of his shift.

Butler testified that, when he relieved Zinski, Zinski told him that the main valves were secured and that was how they want to bring the unit up, that is, that the furnace would be started with the main valves closed. In that setup, no coolant water could flow to the resistance door or to the feed chute liner.

The log maintained by shift supervisors contains entries by Butler, when he started his shift at 11 p.m. on January 9, 1995, which reflect that the outside engineering firm was then in the process of draining water from the resistance door. At 5:45 a.m. on January 10, 1995, i.e., about 6-1/2 hours into Butler's shift,, the boiler was fired up or, in the parlance used, was brought on line. No water was then circulating to the door, which was being "sacrificed," and none was flowing to the feed chute liner. Butler was relieved by Shift Supervisor Cassidy 1-1/2 hours later, at 7:10 a.m. on January 10, 1995. Butler told Cassidy then how the valves were set up. Cassidy responded that that was "OK." The log maintained by Cassidy during his shift reflects that, at 12:30 p.m., i.e., over 5 hours after he began work that day, the flow of waste to fuel the burner was stopped and that, an hour later, at 1:30 p.m., the furnace was off line, i.e., stopped burning.

Felch, the operations manager then, testified that, on January 10, 1995, he was at a meeting across the street from the plant when he was informed by Bob Surrey, the plant engineer, at about 9 a.m., that Cassidy had informed him that water had not been cut into the feed chute liner. Felch testified further that he immediately went over to the plant to bring the boiler off line by stopping the flow of garbage into the furnace. It takes an hour from the time the ramming of garbage into the furnace is stopped before the furnace dies down, i.e., goes off line. As noted above, the log disclosed that the furnace went off line on January 10, 1995, at 1:30 p.m.

Neither Cassidy nor Surrey testified. Zinski testified for the Respondent that, when Butler relieved him on the night of January 9, 1995, he told Butler that the engineering firm "was eliminating the cooling water lines to the resistance door." Zinski answered in the negative when asked if he had told Butler not to turn on the main valve.

Butler testified that, on a past occasion, the furnace had been started on Zinski's shift while no water was flowing to the resistance door or to the feed chute liner, that this resulted in the door being damaged although no damage was done to the feed chute liner then, and that Zinski was not then disciplined. Butler's testimony is to the effect that he thus did not think it unusual, when he was on his shift on January 10, 1995, to bring the furnace on line with the main valves secured.

Zinski testified that the occasion referred to by Butler pertained to a mistake Zinski made when on duty as a relief supervisor. He had allowed the furnace to be started when no water was flowing into the resistance door. Zinski testified that

Operations Manager Felch told him later, in substance, that he was being held responsible for an unsafe act and that a letter was going to be put in his file.

No letter of discipline to Zinski was proffered. Felch's testimony is that he orally disciplined Zinski for having allowed the furnace to go on line when no water was flowing into the resistance door. He made no reference in his testimony to any letter of reprimand being issued to Zinski.

I credit Butler's account as to what was said to him by Zinski when he relieved Zinski near midnight on January 9, 1995.

Felch testified that Butler's being on probation in 1994 was a factor in his decision to discharge Butler on January 13, 1995.

D. Analysis

The credited evidence establishes that the Respondent "had it" with Shop Steward Bittner because of what it viewed as his strong arm tactics in trying to persuade employees to vote his way respecting shift coverage. On several occasions, Butler was asked to submit a second "stronger" written account of an incident involving Bittner that took place on March 31 and another second account of another Bittner incident on April 28. The first incident led to the suspension of Bittner and the second pertained to Bittner's harassment complaint against lead supervisor Zinski. The credited evidence establishes also that the Respondent was more than unhappy with the substance of Butler's original accounts as to Bittner's conduct; it viewed one as not as strong as other accounts it received. Butler's initial account as to the second incident, according to what he was told, contradicted statements given by other supervisors. The clear implication, in the Respondent's asking Butler to submit a stronger account as to the first Bittner incident and from the circumstances in which he was asked for a second account of the other Bittner incident, is that it wanted Butler to change his original versions so that it would prevail against Bittner's grievance on his suspension and his harassment charge against Lead Supervisor Zinski. The timing of the first disciplinary notice to Butler is further evidence as to the Respondent's motive. Butler was placed on probation for 90 days on the same day that the Respondent suspended Bittner. The procedure used to place him on probation further supports a finding as to its motive; the Performance Improvement Plan was one with which neither Butler nor Felch was familiar. The totality of the evidence makes it clear that Butler was disciplined in order to coerce him into changing his accounts to render them useful to the Respondent in its opposition to Bittner's grievance protesting his suspension and to Bittner's complaint of harassment by Lead Supervisor Zinski. Patently, the Respondent thereby interfered with Bittner's contractual right to a fair adjudication of his grievances and, correspondingly, with the rights of its employees as set out in Section 7 of the Act. Cf. *Illinois Fruit & Produce Corp*., 226 NLRB 137 (1976), and *Rohr Industries,* 220 NLRB 1029 (1975), where the Board found that employees' Section 7 rights were unlawfully infringed on when supervisors are discriminated against in being discharged for having testified unfavorably to their respective employers' interests at arbitration hearings. To substantially the same effect, see *Ebasco Services,* 181 NLRB 768 (1970). Although there is no allegation that Butler's twice being placed on probation in the early half of 1994 is violative of the Act, the discriminatory basis of those disciplinary measures may properly be considered in evaluating the Respondent's motive in discharging Butler on January 13, 1995. In that regard, see *Lancaster Fairfield Community Community Hospital*, 311 NLRB 401, 402 (1993), where the Board observed that the reason given by the respondent there for discharging an employee, her asserted lack of interpersonal skills, pertained to her activities protected by the Act and thus warranted a clear inference of unlawful animus.

Felch's account reveals that one of the factors relied on in his decision to discharge Butler was the discipline meted out to him in 1994, actions which, as just noted, were themselves unlawfully motivated. The Board has held that a prima facie case of unlawful discharge is made out by a showing that a motivating factor in the decision to discharge an employee was his union activity. See *Custom Window Extrusions, Inc*., 314 NLRB 850, 861 (1994). The Respondent's reliance on an unlawful factor in its decision to discharge Butler, i.e., its having placed Butler on probation in order to coerce him change his accounts to enable it to counter Bittner, renders the discharge of Butler itself unlawful. I therefore find that the General Counsel has established, prima facie, that Butler's discharge was unlawful.

The credited evidence further buttresses a finding that the General Counsel has made out a prima facie case. It discloses that the Respondent seized on the January 10, 1995 boiler incident as a pretext to discharge Butler. Thus, despite his many years of exemplary service, he was never asked about that incident up to the very moment he was discharged. Rather, the Respondent took 3 days to draft his dismissal letter before giving it to him. Its disparate treatment of Supervisor Zinski for his acts, in an earlier and factual parallel situation, more than suggests that the reason it gave for Butler's discharge is a pretext. It failed also to discipline Shift Supervisor Cassidy although, as reflected in the log entries Cassidy made, he had allowed the furnace to burn at full blast for over 5 hours, after he relieved Butler. That failure is clearly another instance of disparate treatment which points to the pretextual nature of the reason it gave for Butler's discharge. Felch's account also hardly supports the Respondent's contention. If, as the Respondent contends, the failure to valve in water to the feed chute liner could have resulted in considerable damage to the feed chute liner, it is mystifying as to why, as the log shows, it was not until about 3 hours or more after he was notified before steps were taken to stop the flow of garbage into the furnace. If anything, his account would lend some substance to Butler's routine acceptance of Zinski's comment that the boiler would be brought on line with the main valves secured.

In view of my finding that the General Counsel has made out a prima facie case, the Respondent, under the Board's holding in *Wright Line,* 251 NLRB 1083 (1980), had the burden of proving that it would have discharged Butler regardless of his refusal to accede to its coercive efforts to have him modify the substance of the written accounts he had submitted respecting the actions of shop steward Bittner. The Respondent has offered no probative evidence to warrant a finding that it has met that burden.

As the General Counsel has established a prima facie case which the Respondent has not rebutted, I find that the Respondent discharged its supervisor, Daniel Butler, on January 13, 1995, because he refused to accede to its repeated discriminatory efforts to have him revise the substance of his accounts of incidents in order to bulwark its positions respecting a grievance and a harassment charge filed against it by one of its employees.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act by having discharged its supervisor, Daniel T. Butler, for refusing to modify the substance of his versions of incidents, one pertaining to discipline it meted out to an employee and the second to a harassment charge filed against it by that employee.

3. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I recommend that the Respondent be ordered to offer Daniel T. Butler immediate and full reinstatement to his former position of shift supervisor, without prejudice to any of his rights and privileges, or it no longer exists, to a substantially equivalent position and to make him whole for any loss of pay he suffered as a result of its having unlawfully discharged him. Backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]